

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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| In the Matter of |) | |
| |) | |
| Modernizing the Form 477 Data Program |) | WC Docket No. 11-10 |

**COMMENTS OF THE AMERICAN CABLE ASSOCIATION
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING**



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I. INTRODUCTION AND SUMMARY

The American Cable Association (“ACA”) hereby comments on the Further Notice of Proposed Rulemaking (“FNPRM”) in above-referenced proceeding, which seeks to update the broadband connection data the Commission collects in Form 477.¹ The Federal Communications Commission (“Commission”) aims to ensure the data it collects are accurate and align with their uses while not being unduly burdensome.² ACA represents approximately 750 small and mid-sized cable operators and other local providers of broadband Internet access, voice, and video programming services to residential and commercial/government customers. As fixed broadband service providers, they file with the Commission Form 477 data on their voice and broadband subscriptions and on their broadband deployments.³ They also

¹ *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Further Notice of Proposed Rulemaking, 32 FCC Rcd 6329 (2017) (“FNPRM”).

² *Id.* at 6331, paras. 6-7.

³ As fixed providers, ACA members submit subscription data by total connections in each census tract in which they provide service and deployment data in the census blocks where they can provide broadband service, along with the last-mile transmission technology, maximum download/upload speed of service packages, and whether the service is available for consumers or commercial/government customers. FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions (Dec. 5, 2016), available at <https://transition.fcc.gov/form477/477inst.pdf> (“Form 477 Instructions”).

use Form 477 data to participate in, evaluate, or otherwise inform themselves about Commission programs and proceedings. As a result of these experiences, ACA members believe they are in a good position to comment on the Form 477 data collection and whether it strikes an appropriate balance between the benefits of the collection and its burdens.

ACA's smaller cable operator members are especially concerned about the imposition of additional Form 477 collection requirements, including proposals to collect and supply more granular broadband deployment data. Most of these ACA members have fewer than 1,000 broadband customers. As ACA has indicated to the Commission, these providers already find complying with Form 477's requirements to continuously file subscribership data on a census tract level and deployment data on a census block basis to be a significant burden.⁴ As discussed herein, imposing more granular deployment collection requirements would increase their in-house and, where relevant, consultant/vendor costs considerably. Accordingly, ACA urges the Commission to refrain from imposing additional deployment collection requirements on its cable operator members.

In the FNPRM, the Commission explains that to reach decisions "based on sound and rigorous data analysis," it needs access to "[a]ccurate and reliable data on fixed and mobile broadband and voice services."⁵ ACA agrees. By any measure, the Commission in the 2013

⁴ See Letter from Thomas Cohen, Counsel to American Cable Association, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-10, at 1 (Mar. 18, 2013).

⁵ FNPRM, 32 FCC Rcd at 6331, para. 6. See *Modernizing the FCC Form 477 Program*, Report and Order, 28 FCC Rcd 9887, 9892-96, paras. 14-19 (2013) ("*2013 Form 477 Order*"). In this decision, the Commission sought to achieve the same goal of obtaining accurate, detailed data about deployment and subscription. For the collection of deployment data, it concluded that "the collection is carefully tailored to provide the Commission the data it needs to fulfill its mission, while taking steps to minimize the burden on filers." *Id.* at 9897, para. 23. One of these steps was to decide not to collect data at the street address level. *Id.* at 9905, para. 35 (stating that "moving from census block to address-level reporting could lead to a significantly higher burden.") The Commission also explained that one of key features of the collection it instituted in 2013 was that it required filers to "certify that the data are accurate, which will promote complete and accurate data." *Id.* at 9898, para. 24. ACA agrees with the value of this certification. The Commission should maintain this objective, and, as it did in 2013, recognize that there are

Form 477 Order made major strides towards achieving this goal by, among other things, requiring the submission of broadband deployment data on the far more granular census block basis.⁶ While this new collection greatly expanded the Commission's understanding of the broadband landscape, it came at a significant additional cost for providers, since they were not generally collecting data on this basis and had to generate new means to produce it. ACA recognizes that, even though it is more accurate and useful, the current Form 477 data collection has shortcomings; however, it does not necessarily follow that the Commission must then expand the scope and increase the granularity of data it collects from fixed service providers in Form 477. Rather, it should develop – and in some ways already has done so – a holistic approach to data collection using Form 477 and other mechanisms that maximize accuracy and quality while minimizing burdens.

To that end, ACA submits that collection of broadband and voice services data will best achieve the Commission's aims by adopting the following approach:

First, the Commission should link any data collection to its purpose, both in the type and extent of the data collected and in measures to ensure the data are accurate when submitted and valid for the time during which they will be used. For instance, as Connected Nation notes, granular data are needed “to solve the broadband gap in rural and other insular areas.”⁷ Similarly, street address information may be necessary to examine horizontal overlaps from a proposed transaction between two providers. On the other hand, sub-census block data may not be necessary to examine deployment in more urban areas or to analyze the overall market for the provision of a certain type of service. In addition, there is no reason to require a provider

significant limits to the accuracy of street address information that filers currently maintain, which are due to factors beyond the filers' control. *Id.* at 9904-05, para. 35.

⁶ *Id.* at 9902, para. 32.

⁷ See Comments of Connected Nation, Inc., WC Docket No. 11-10, at 6 (Sep. 14, 2017).

operating in an urban area to provide additional data in Form 477 if the Commission is inquiring about the extent of unserved locations in remote areas or for a small, rural provider to submit data if the Commission is examining competition in urban areas.

Second, just as it did in the *2013 Form 477 Order*, the Commission should avoid imposing on providers, particularly small- and medium-sized providers, unduly burdensome data collection requirements.⁸ While these providers know their current subscribers' locations through their billing records, even after they "scrub" these addresses to ensure accuracy, they often face challenges in converting this information into census tract data. In any event, these subscriber data do not necessarily indicate locations where a provider's broadband service is available.⁹

Third, where it finds it needs to collect more expansive or more granular data than now collected via Form 477, the Commission should use mechanisms other than Form 477 so it can obtain the specific data it needs most efficiently and with the fewest burdens imposed on filers. For instance, the Commission has addressed Form 477's shortcoming in not providing complete sub-census block data by instituting the Connect America Fund ("CAF") challenge processes whereby providers submit more granular data about broadband deployment in select unserved or other eligible areas.¹⁰ The Commission also has initiated a new data collection process to

⁸ See *2013 Form 477 Order*, 28 FCC Rcd at 9901-02, para. 29. The Commission concluded in 2013 that "the benefits of having comprehensive data substantially outweigh the burdens" on smaller providers, but, at the same time, took "steps to minimize burdens, including by making our deployment collection consistent, to a large extent, with NTIA's SBI data collection." *Id.* See also Comments of the Utah Governor's Office of Economic Development, WC Docket No. 11-10, at 6 (Sep. 18, 2017) ("Utah Comments") ("[i]t has also been our experience that many small rural carriers may require assistance to submit broadband data, regardless of the data model implemented The FCC should ensure that the data model and collection process will be simple for providers or should provide tools and other resources to help them successfully complete submissions.").

⁹ See Utah Comments at 6.

¹⁰ See e.g., *Connect America Fund, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2181, para. 66 (2017) ("Consistent with the general approach adopted for MF-I

ensure that most fixed providers receiving CAF support are achieving their deployment milestones.¹¹

Accordingly, while the Form 477 data collection is an important tool to assess the state of voice and broadband subscribership and broadband deployment, the Commission should not turn it into the sole vehicle for the collection of detailed and accurate broadband and voice services data. Instead, it should use this proceeding to construct an overall strategy about how to gather broadband and voice data – a strategy that meshes the granularity and precision of the data required with Commission’s specific needs and that places collection burdens only on those whose data are required and only to the extent necessary. ACA believes that in adopting this approach, Form 477 would become the source for baseline data on broadband and voice services, and the Commission would collect more extensive and more granular data through other mechanisms on an “as needed” basis to achieve specific purposes.¹² The Commission

and more recently, for CAF-II, we conclude that we will provide a robust process for interested parties to challenge our list of presumptively eligible areas for MF-II support.”) (internal citations omitted); *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7766, 7776, para. 28 (2013) (“We conclude that such a challenge process would improve the accuracy and efficacy of a second round of Phase I support, allowing support to be appropriately targeted to unserved areas consistent with our overarching goals for Phase I.”); *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211 (WCB 2013) (establishing the Connect America Fund Phase II challenge process).

¹¹ See USAC, “HUBB Frequently Asked Questions,” available at https://www.usac.org/_res/documents/hc/pdf/tools/HC-HUBB-FAQ.pdf.

¹² See Utah Comments at 8. The Utah Governor’s Office of Economic Development (“GOED”) has “taken an active role in broadband planning and mapping efforts since 2010.” *Id.* at 1. It argues for the Commission to adopt a strategy for the Form 477 data collection in which “the requirements, reporting process, and publishing timeframe should be streamlined to ensure the maximum benefit to industry and citizens, with minimum expenditure of resources.” *Id.* at 8. More specifically, it submits that the “current capabilities map layer should provide a neighborhood-level overview for the general expectation of service,” which “can be generalized using census blocks, geometric grid cells, or other fine scale geographic unit of aggregation,” and more precise (address level) information would be collected “independently and sustained” to determine unserved and underserved locations. *Id.* at 8. GOED also seeks to have address-level mapping of unserved and underserved locations to further public safety goals and suggests the Commission collaborate outside the Form 477 process because of the likely “undue burden on broadband providers” with other national and state programs “to produce a publicly available, national set of address location points in rural areas.” *Id.* at 8-9.

thus should largely maintain Form 477's data collection, at least for wireline providers, although ACA suggests that the Commission collect data annually, not semiannually, which would relieve burdens on itself and filers without reducing the value of the data materially.

II. GRANULARITY

The FNPRM inquires whether the Commission should alter the requirement that fixed broadband providers submit deployment data on a census block level and instead provide more granular, sub-census block data.¹³ The FNPRM offers various alternatives, including the collection of data at the street address level or by street segments.¹⁴ It also raises the possibility of having the street address data geocoded, either by the provider in its submission or by the Commission once the data are submitted.¹⁵

In the *2013 Form 477 Order*, the Commission found that collecting data on a more granular level than census blocks would add complexity and burden without providing significant additional insight about the number of locations lacking broadband service.¹⁶ It further explained that by declining to gather data on a more granular level, it would minimize the significant economic impact on smaller entities.¹⁷ Moreover, when it has needed more granular

¹³ FNPRM, 32 FCC Rcd at 6341, para. 38. The FNPRM also asks whether fixed providers should have the option of reporting data by filing geospatial data showing coverage areas rather than reporting by providing a list of census blocks. *Id.* As indicated below, ACA has not found that its members keep their deployment data in such a format.

¹⁴ *Id.* at 6341-44, para. 37-44.

¹⁵ *Id.*

¹⁶ *2013 Form 477 Order*, 28 FCC Rcd at 9904-05, para. 35. The Commission noted that many providers do not maintain deployment data at the street address level or that they may not do so in a standardized manner and that, in rural areas, street addresses may not be assigned to locations. *Id.* As for the time required to complete the current Form 477, the Commission has calculated the average time for the average respondent to be 355 hours per response. See *Information Collection Being Submitted for Review and Approval to the Office of Management and Budget*, OMB 3060-0816, 82 Fed. Reg. 22543, 22544 (May 16, 2017); Office of Management and Budget, Executive Office of the President, "OIRA Conclusion" (June 28, 2017), available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201704-3060-018#.

¹⁷ *2013 Form 477 Order*, 28 FCC Rcd at 9952, para. 61 (App'x C, Final Regulatory Impact Analysis).

data, such as in awarding CAF support, the Commission has instituted special collection and challenge processes.¹⁸ These special collections, while burdensome for providers and the Commission alike, better align the benefits and costs of data collection in contrast to a generic, sweeping requirement to provide more granular data to fulfill some vague or uncertain need.

ACA recognizes that collecting data at a census block level lacks precision, both because of under- and over-counting.¹⁹ However, as one-time Wireline Competitive Bureau Deputy Chief Carol Matthey explained in Congressional testimony earlier this year, “I am not aware of any comprehensive current dataset showing the geocoded location of every structure where one might want broadband to be available in the United States [M]ost service providers – whether incumbents or non-incumbents – do not maintain records of service availability with geocoded locations.”²⁰ She further noted that, while the Commission could alleviate the burden of requiring the collection of more granular data by exempting some

¹⁸ See *supra* note 10. Requiring granular reporting for the more than 11 million census blocks in the United States to determine where to award CAF support would be very inefficient and wasteful since most of the blocks are in more urban areas and are clearly served. See also Testimony of Carol Matthey, Principal, Matthey Consulting LLC, Defining and Mapping Broadband Coverage in America, Before the Subcommittee on Communications and Technology of the Committee on Energy and Commerce, U.S. House of Representatives, at 8 (June 21, 2017) (“*Testimony of Carol Matthey*”) (“[T]here are several advantages to using a challenge process to refine the understanding of which areas have broadband available, rather than wholesale revision of the FCC’s Form 477 data collection. First, participation in a challenge process is voluntary Second, a challenge process is likely to focus on a much smaller set of census blocks Third, a challenge process can take into account additional information.”).

¹⁹ For purposes of Form 477, the Commission currently counts a census block as served in most instances if an unsubsidized provider has deployed its network to only one location in that census block. This is recognized as a shortcoming in solely relying on Form 477 to determine whether an area is served, which was addressed and fixed by using challenge processes to determine where to provide CAF fixed and mobile support. See *supra* note 10. ACA supports use of these additional mechanisms to collect more accurate data. It notes that this additional and more precise data collection also enables the Commission to focus on the issue of “availability,” which is critical to ensuring locations are served most efficiently and not wasting federal support by using this funding where private support will accomplish the same end. ACA further urges the Commission to explore additional processes to gather data about unserved locations, including by establishing a clearinghouse on its website or by working with state and local governments and community organizations.

²⁰ *Testimony of Carol Matthey* at 5.

providers, “the end result would be an inconsistent and incomplete picture of the actual extent of coverage.”²¹ The Utah Governor’s Office of Economic Development offers a similar assessment, explaining, “[t]he underserved and unserved addresses, the locations precisely most important to broadband policy, are the least likely addresses to be located by geocoding techniques due to the quality of the geographic reference data in these areas. Manual determination of ungeocoded addresses will be a daunting task with little collateral benefit.”²²

ACA canvassed its cable operator members about their compliance with filing information for Form 477. To provide voice and broadband subscribership data on a census tract basis, these members collect data from their billing systems and then scrub the addresses to ensure they indicate specific locations and are the same as those in the U.S. Postal Service database. Many, especially smaller operators, then geocode this information themselves (manually) or hire a consultant to assist them. Others, particularly larger members, have purchased software from a vendor that executes this task. Regardless of the methodology, ACA members take considerable time and incur significant expenses to supply accurate data for each semi-annual filing because their business are far from static. Many members (e.g., those providing service in a college town) have substantial customer churn. Others are frequently upgrading their broadband service or offering new broadband bundles, which results in customers changing their subscriptions.

For ACA’s cable operator members, collecting deployment data is a much different exercise, since billing systems only indicate where an operator has existing customers and not

²¹ *Id.* at 5-6. See also Comments of the USTelecom Association, GN Docket No. 17-199, at 22 (Sep. 21, 2017) (“While the FCC’s [Form 477] data are not perfect, they are far superior to earlier used data sets, and any overstatement due to reporting at the census block level is likely to be relatively small at broad geographic levels such as county, state and national levels. In fact, census block data are quite granular by historical and international standards.”) (“USTelecom Comments”).

²² See Utah Comments at 7.

where service is available. Some of its cable operator members provide deployment data by using the geocoded subscribership information as an approximation (albeit an underestimated approximation) of their service territory. Others overlay maps of their networks (indicating serviceable locations in their franchise areas) with census block maps to determine in which blocks they have deployed broadband service.²³ Most ACA members use both methods in tandem. In either case, because most cable operators have DOCSIS networks, over which they can provide broadband with the same performance to all locations, it is then relatively easy for them to determine the maximum performance of their broadband offerings. But it is important to keep in mind that these operators are not identifying all locations they can serve, just the locations where they are providing service in a census block. To determine whether each location (by address) in a census block could be served within an appropriate reasonable timeframe would require a field inspection and an examination of deployments plans. The provider would then have to log the information, determine whether an accurate address is available, geocode or otherwise identify each location in the census block, and enter it into a database, which it may need to acquire. In addition, just knowing where the network reaches at any given time may not be enough. These operators also may need to keep track of the addition and subtraction of new locations in their service territory and then make sure that their deployment reporting takes account of this changing information.

As for members that do not have DOCSIS (or all-fiber) wireline networks,²⁴ the process for submitting broadband deployment data is even more difficult, since the performance of their

²³ To provide broadband and voice subscription data, providers work from their billing records, which provide a list of locations. These locations need to be scrubbed. Smaller providers tend to manually convert these locations to geocodes for purposes of identifying census blocks, although many have consultants handle this task.

²⁴ More than half of ACA's members are local telephone companies, many of whom provide broadband service using DSL technology.

broadband offerings depends on the distance the location is from the central office/remote terminal. This also holds for fixed wireless networks, where broadband performance and coverage vary based on the distance from the transceiver and terrain.

Finally, ACA has not found any member that has converted its street address information into geospatial data showing coverage areas by shapefiles or rasters, or used it to identify locations it serves by latitude, longitude, and altitude, since there appears to be no business purpose to undertake such work. In addition, while ACA members' billing systems can track subscribership data, these systems do not currently track deployment data and are limited in the amount of information that can be stored. Thus, if required to collect and analyze additional deployment data, they would have to purchase new billing and potentially other software or update existing ones. In sum, the vast majority of ACA members would need to expend substantial resources to provide sub-census block data (or data in some new format other than census block).²⁵

Of course, whether it is worth the cost for ACA members to collect and supply more granular data depends on the purposes for which such data are needed. Requiring the provision of census block data was a major stride forward, and the data collection, even with its shortcomings, generally provides accurate and useful data. As the USTelecom Association recently commented, Form 477 data currently provide an "accurate picture of broadband availability" for analysis at broad geographic levels.²⁶ ACA submits that the Commission has

²⁵ This conclusion jibes with last year's testimony by Carol Matthey. *See Testimony of Carol Matthey* at 5 ("[W]hat I learned in the course of my work on the Connect America Fund is that most service providers – whether incumbents or non-incumbents – do not maintain records of service availability with geocoded locations. Requiring all broadband providers in the country to report fixed deployment at the address level, or by geocoded location, would be a significantly more burdensome data collection for affected broadband providers, both big and small, than what exists today.").

²⁶ USTelecom Comments at 22.

already determined that where it needs more granular data (e.g., the CAF challenge process or to review a proposed merger), it can undertake a process to gather that information.²⁷ It, thus, can achieve its ends by a more targeted means and should not mandate that providers collect and submit more granular data in Form 477.

III. FIXED DEPLOYMENT DATA REPORTING GENERALLY

The FNPRM raises concerns that the data currently collected may not indicate sufficiently the “availability”²⁸ of broadband service in each census block, and it therefore seeks comment on whether to require fixed providers to submit the following data:

- “(1) areas where there are both existing customers served by a particular last-mile technology, and total number of customers using that technology can, and would, be readily increased within a standard interval upon request;
- (2) areas where existing customers are served but no net-additional customers using that technology will be accommodated; and
- (3) areas where there are no existing customers for a particular technology but new customers will be added within a standard interval upon request.”²⁹

²⁷ See *Testimony of Carol Matthey* at 8 (“Notwithstanding the burdens that it places on those who actually have to review all of the information and make a decision, there are several advantages to using a challenge process to refine the understanding of which areas have broadband available, rather than a wholesale revision of the FCC’s Form 477 data collection. First, participation in a challenge process is voluntary, so parties can make their own determination of whether the regulatory benefits outweigh the regulatory burdens of such participation. Second, a challenge process is likely to focus on a much smaller set of census blocks – specifically those in rural areas with some population – that are likely candidates for new deployment initiatives, rather than the many more numerous suburban and urban census blocks that are unquestionably served. Third, a challenge process can take into account additional information that is not part of Form 477 data collection that may be of policy interest, including attributes of the desired broadband service other than speed.”).

²⁸ ACA notes that the current Form 477 Instructions state that “fixed broadband connections are available in a census block if the provider does, or could, within a service interval that is typical for that type of connection—that is, without an extraordinary commitment of resources—provision two-way data transmission to and from the Internet with advertised speeds exceeding 200 kbps in at least one direction to end-user premises in the census block.” Form 477 Instructions at 34.

²⁹ FNPRM, 32 FCC Rcd at 6340, paras. 33-34.

ACA supports the intent of this proposal – to gain greater precision in whether broadband service using a specific technology is available – but not the means, using Form 477. The reason is straightforward: whether broadband service is “available” depends on the objective of the analysis, and the Commission can more precisely define “availability” for a particular purpose and collect that information when needed without burdening Form 477 filers in general. For example –

- In the context of reviewing a proposed merger transaction between broadband service providers whose territories overlap, the Commission’s definition of “availability” may include the already adopted expansion plans of these providers, as well as the potential for entry by other providers with substitutable offerings, over a two-year time frame.
- In the context of determining whether to provide CAF support for an area, the Commission’s definition of “availability” may include the potential for an existing or proximate provider to build the Commission’s required broadband service within several years.
- In the context of determining whether a provider can meet CAF public interest obligations, the Commission’s definition of “availability” may include providing the Commission’s required broadband service to almost all locations within a relatively brief window.

The meaning of “availability” thus varies depending on the underlying purpose of the collection.³⁰ The Commission, in fact, already has recognized the importance of linking

³⁰ This approach is well-known to cable operators as it is already ingrained in their business practices. Franchise agreements normally require cable operators to provide (make available) service within a limited time frame (e.g., seven days), but this “standard availability interval” does not apply for “excessively high-cost” locations. Here, “availability” may be determined by whether the consumer agrees to pay an additional amount to receive service and then the time required for the operator to undertake the build. Franchise agreements also usually include provisions that the “standard availability interval” does not apply where the operator cannot provide service due

“availability” to the purpose of the collection, as it is proposing to require applicants for the CAF Phase II auction to provide information about whether their service would be “available” to the eligible locations.³¹

ACA thus suggests the Commission not seek to collect additional “availability” data in Form 477. Not only will collection of this additional data in Form 477 be burdensome, but will be of dubious use. Instead, this type of data should be collected when and where it is needed.

IV. COLLECTION OF BUSINESS, ENTERPRISE, AND GOVERNMENT SERVICES FIXED BROADBAND DEPLOYMENT DATA

Form 477 currently requires providers offering fixed broadband service to business/enterprise/government end-users to report the maximum downstream and upstream contractual or guaranteed data throughput rate (committed information rate (“CIR”)) in each reported census block.³² The FNPRM inquires whether to eliminate this requirement, while maintaining separate reporting of the availability of mass market service and business/enterprise/government service.³³

In the *2013 Form 477 Order*, the Commission provided at best minimal support for adopting the CIR.³⁴ The FNPRM sets forth no rationale to support maintaining the existing requirement, concluding that the mass market data “already provides the necessary bandwidth data” for the Commission’s programs and proceedings.³⁵ ACA agrees that whatever rationale

to circumstances outside the operator’s control – such as delays in obtaining pole attachments or access to public rights-of-way.

³¹ *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 6238, 6251, para. 41 (2017).

³² *2013 Form 477 Order*, 28 FCC Rcd at 9906, para. 38.

³³ FNPRM, 32 FCC Rcd at 6338-39, para. 31. The FNPRM also asks how it should collect data reflecting the speeds offered to business/enterprise/government end-users. *Id.* at 6339, para. 31.

³⁴ *2013 Form 477 Order*, 28 FCC Rcd at 9906, para. 38.

³⁵ FNPRM, 32 FCC Rcd at 6339, para. 31.

the Commission might have had for adopting the requirement in 2013 no longer exists. While ACA's members generally give business/enterprise/government end-users the option of subscribing to their broadband service on a best-efforts basis or on a CIR basis, they are finding that particularly small- and medium-sized end-users increasingly do not distinguish between these types of offerings as broadband service performance for best-efforts is enhanced. The Commission also found this to be the case in its Business Data Services decision.³⁶ Accordingly, because there is little, if any, value in collecting data about the maximum downstream and upstream contractual or guaranteed data throughput rate and whatever value that did exist is diminishing, ACA supports its elimination and maintains that it is sufficient to collect data on the maximum download/upload speed of its service packages generally offered to these end-users.

V. FREQUENCY OF FILING

Currently, Form 477 data are collected semi-annually; the FNPRM asks whether the Commission should instead collect data annually.³⁷ ACA supports amending the collection process so that Form 477 is submitted annually. Because each collection requires the average ACA member to spend a significant amount of a person's time, it will alleviate a significant burden.³⁸ ACA acknowledges that many of its members are regularly extending and upgrading their networks and increasing the performance of their service tiers. However, the Commission's semi-annual broadband deployment public report varies little from the previous one, and the Commission does not appear to act on any variations in "semi-annual" reporting.

³⁶ *Business Data Services in an Internal Protocol Environment et al.*, WC Docket No. 16-143 *et al.*, Report and Order, 32 FCC Rcd 3459, 3474-75, para. 31 (2017).

³⁷ FNPRM, 32 FCC Rcd at 6348, paras. 56-57.

³⁸ In addition, from discussions with ACA members, any additional burden of collecting greater amounts of data annually because there are more changes to the data is *de minimis*. In other words, an annual collection will not come close to taking twice as much time as each semi-annual collection.

In any event, as discussed herein, should the Commission need more expansive or granular data, it can seek that when needed. Finally, moving to an annual report would lessen burdens on the Commission, which on occasion has taken more than a year to release Form 477 data.³⁹

VI. CONCLUSION

In the *2013 Form 477 Order*, the Commission took a major step to ensure it obtains accurate and sufficient data about voice and broadband subscribership and broadband deployment. Then, to ensure it has the information necessary in specific proceedings to achieve particular aims, the Commission has enhanced this collection on a case-by-case basis. ACA submits that this approach has worked well. Turning Form 477 into a much more elaborate and granular collection is unlikely to prove effective since Commission proceedings often need different and specific data. It also will not be efficient since it will require all providers

³⁹ See Utah Comments at 10 (“[T]he FCC has taken as long as 18 months to release data”); Comments of the California Public Utilities Commission, WC Docket No. 11-10, at 2 (Sep. 25, 2017) (“If the FCC does not have sufficient staff resources to collect and disseminate the Form 477 in a prompt manner, requiring providers to file on an annual basis, instead of every six months, may reduce the data processing burden and improve the timeliness of its publication There have been times when this data lag has approached two years.”).

to submit data even if they are not relevant. As such, the Commission can best achieve its needs for “better” subscribership and deployment data from wireline providers, while minimizing collection burdens on these providers, by largely maintaining the existing Form 477.

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